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June 16, 2003
Via Overnight Service

Ms. Rose Naccarato
Economic Policy Analyst
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

**RE: DN 03-00368: Customer Transfer to
Lightyear Communications Inc. from The Free Network, LLC**

Dear Ms. Naccarato:

Pursuant to conversation with Kim Beals of the Regulatory Authority's staff, attached please find the original and nine (9) copies of additional information and comment addressing staff's concern with the customer notification submitted on behalf of Lightyear Communications, Inc. ("Lightyear") in connection with a partial customer base transfer from The Free Network, LLC ("TFN") to Lightyear. This letter constitutes Lightyear's request for waiver of Rule 1220-4-2-.56(2)(d)4 and a portion of Rule 1220-4-2-.56(2)(d)2 for the reasons set forth below.

As discussed with staff, Lightyear has already accomplished the notification to TFN's 187 Tennessee customers prior to filing with the TRA. This was done in order to be in compliance with both the FCC filing requirements, as well as the great majority of other states' requirements, including Tennessee, that copies of the FCC filing, which itself must contain the customer notification, be included with state filings. It is our understanding that the TRA nevertheless regularly requires carriers to re-notify customers in order to effect compliance with the TRA's own notification requirements.

According to staff, the Authority could very likely require renotification to TFN's Tennessee customers because the notice did not contain language to the effect that should Lightyear increase rates within ninety days of the transfer, that customers will be given thirty days' notice, as required by Rule 1220-4-2-.56(2)(d)4. In addition, subpart (d)2 of the same rule requires that the notification letter be mailed "by the telecommunications service provider being acquired," which in this case would presumably mean TFN although TFN is not being acquired by Lightyear.

Lightyear hereby requests waiver of Rule 1220-4-2-.56(2)(d)4 and that portion of subpart (d)2 of the same rule, and further requests approval of the letter already sent to customers in early May as being sufficient notice to TFN's customers of the impending transfer.

In support of this request, Lightyear submits the following:

With respect to notifying customers a second time:

The customer notice already mailed to customers on or about May 6 advises customers, in user-friendly terms of the following: (1) the pending change of their direct dial and toll-free service carrier selection to Lightyear; (2) there will be no change in the way they dial or in the customer service available to them; (3) there will be no charges associated with their change to Lightyear as their long distance retail carrier; (4) their current service will not be affected and will be provided at the same rates as those currently charged by TFN; (5) they have the option to select a different service provider if they prefer. The notification also includes customer inquiry numbers for both Lightyear and TFN that customers may call for more information. The notification was signed by officers of both carriers.

The notification specifically stated that there would be no change in customer rates or service. Because TFN resells existing Lightyear services, no change in service is necessary to accomplish the transfer, as would likely be the case if TFN were not a wholesale customer of Lightyear.

Lightyear is concerned that renotifying customers solely to provide information "in the event of a rate change within ninety days" would cause undue and unnecessary customer confusion. It is highly likely that customers will then believe that an increase is pending when in fact it is not. TFN, Lightyear, and quite possibly the TRA may be subject to a number of inquiries that would not occur except for the fact of the second notice. Rather than risk confusing customers at this point, Lightyear asks the TRA to accept its commitment not to change rates within the first ninety days, in lieu of customer renotification.

For these reasons, Lightyear requests that the TRA grant a waiver of Rule 1220-4-2-.56(2)(d)4 in this instance and approve the customer notification letter that has already been approved by the FCC.

With respect to mailing a customer notification with TFN's return address:

Rule 1220-4-2.56(2)(d) sets forth four criteria that must be met in order for the Authority to deem that sufficient notice has been given and approval received from affected customers. The second criterion requires that the customer notification be mailed by the "service provider being acquired."

Preparation and mailing of customer notification requires a significant amount of planning and coordination in order to be accomplished on a nationwide basis, including the FCC, particularly in the timeframes often required. It is an expensive undertaking and in this case an outside vendor was hired by Lightyear to do the actual mailing. To separate out the 187 Tennessee addresses from the approximately 8000 letters that were mailed out and stuff a different letter into an envelope with a different return address, all of which would have been required under TRA rules, would have incurred a prohibitive cost since much of it must be done manually. Under the terms of the agreement between Lightyear and TFN, Lightyear agreed to undertake the regulatory costs of the transfer, which includes the customer notification.

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Lightyear understands and acknowledges the goal of the TRA as expressed by staff: to maximize the chance that customers actually open and read the notification. There was apparent concern at the time the rule was promulgated that customers may not bother to open correspondence from a telecom carrier with whom they are not familiar. The rule is admirable in its intent, but can be prohibitively expensive and awkward to implement.

Lightyear requests a waiver of this specific provision as it would cause the Company to incur undue additional expense and would be time-consuming and difficult to implement. As stated in the customer notification, and as discussed with staff, the entire transaction is scheduled to be completed by August 1. Notification had to take place in May in order to allow time to perform all the necessary tasks and respond to any customer inquiries. This issue is scheduled for the July 7 conference. If the Authority denies Lightyear's request to waive the requested rules, then Lightyear would presumably be required to submit a revised notification for approval. Following approval, preparing and mailing out a second customer notification would take at minimum a week. If the Authority denies Lightyear's request for rule waiver, Lightyear therefore respectfully requests that the 30 day notice requirement in Rule 1220-4-2.56(2)(d)2 be waived.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for that purpose. Any questions you may have regarding this filing may be directed to my attention at (407) 740-3004.

Sincerely,



Robin Norton
Consultant

cc: Linda Hunt - Lightyear
file: Lightyear - TN- IXC
tms: TNx0301c